

COPY

1 STATE OF NEW MEXICO
2 COUNTY OF RIO ARriba
3 FIRST JUDICIAL DISTRICT
4 BEFORE HONORABLE STEPHEN PFEFFER
5 No. D-117-CV-2011-00521
6 CORLINDA H. LUJAN,
7 Plaintiff,
8 vs.
9 ACEQUIA MESA DEL MEDIO, et al.,
10 Defendants.
11
12
13
14

15 SCHEDULED HEARING ON MOTIONS
16 11:15 A.M.
17 FRIDAY, JUNE 15, 2012
18 SANTA FE, NEW MEXICO

18 APPEARANCES:

19 FOR THE PLAINTIFF: Taylor & McCaleb, P.A.
20 By: Elizabeth Taylor, Esq.
21 P. O. Box 2540
22 Corrales, NM 87048-2540

21 FOR THE DEFENDANTS: Mary E. Humphrey
22 Humphrey & Odè, P.C.
23 P. O. Box 1574
24 El Prado, NM 87529

25 Transcribed by: Mary Therese Macfarlane, CCR

E

1 MS. TAYLOR: Yes, sir. That is a statutory
2 requirement and -- that they have this meeting. And
3 again, in the Aztec Ditch case the Supreme Court said that
4 you don't have to have a person before the Court if what
5 you're asking them to do is follow a statutory duty that
6 they already have.

7 And so, really, our focus is this acequia and
8 having them follow their own bylaws and the state law.

9 THE COURT: Okay. Thank you.

10 Anything further?

11 MR. TAYLOR: Yes, sir. Just a note about the
12 third category that Ms. Humphrey raised, Leandro Martinez
13 and his wife.

14 Your Honor, I'm not sure if you were aware but
15 that he has sued -- or excuse me, not sued, but has filed
16 a motion in federal district court concerning the
17 ownership issue. And certainly he could have filed that
18 motion in this court, and I'm not sure why he chose the
19 federal court instead of the state district court, but
20 he's actively trying to protect his water right, what he
21 believes is his water right there.

22 THE COURT: All right. Thank you.

23 MS. TAYLOR: Thank you.

24 THE COURT: I'm prepared to rule.

25 Subsequent to the Aztec case which is referred

1 to by Plaintiff, we do have a statutory and declaratory
2 judgment, which is the action that is being brought here.
3 It requires that all persons be made parties who have, or
4 claim any interest which would be affected by the
5 Declaration, and no Declaration shall prejudice the rights
6 of persons not parties to the proceeding.

7 Again I believe that circular reasoning to think
8 that because one party believes it prevails and has the
9 law and facts on its side that that obviates the need for
10 joining the parties.

11 This Court would find that in order for this to
12 go forward -- you know, defense have raised two
13 alternatives, and I'll hear that. One would be that I
14 dismiss the action; and the other one would be that
15 Plaintiff must join all the necessary parties.

16 So that's the way I read the pleadings, that I
17 am being asked this in the alternative.

18 So I'll hear first from the defense, which this
19 was part of its motion, and then decide whether I'm giving
20 a choice or not to the Plaintiff on that approach.

21 MS. HUMPHREY: Well, your Honor, the law, the
22 Declaratory Judgment Act, I believe is very clear:
23 Jurisdiction doesn't vest until all parties are joined.

24 It's a little bit -- becomes a little ambiguous,
25 when you look at the Rules of Civil Procedure on necessary

1 parties, because now the rules have been changed to give
2 defendant opportunity.

3 In this case, your Honor, I would urge the
4 entire lawsuit be dismissed. I think the 12B (6) motion
5 will show that the essence of the lawsuit can't go
6 forward. It's not --

7 THE COURT: I can't get to that.

8 MS. HUMPHREY: Okay. So I won't go there yet.

9 THE COURT: No.

10 MS. HUMPHREY: But in this case it's going to be
11 remanded back here. The Plaintiff will have cost a lot of
12 money and defendants --

13 THE COURT: You are starting to sound like the
14 other sides argument, that we win, why bother?

15 MS. HUMPHREY: I think everybody needs to be
16 here. That is basically the truth, --

17 THE COURT: The question is --

18 MS. HUMPHREY: Should you dismiss it.

19 THE COURT: The question is why would it be --
20 if Plaintiff plans to pursue this, they would just refile
21 and reserve three or four people they've already served,
22 and now they'd have to do that plus everyone else, or we
23 keep the three or four people they've served and have
24 everyone else.

25 So I don't know why I would dismiss it versus

1 giving the Plaintiff some reasonable time in which to
2 amend their Complaint in such a fashion as to join all the
3 other entities, the parc -- and I agree, parciantes, the
4 other two acequias if they are going to pursue that relief
5 of that claim, and also sue the entity that's already
6 suing them, and give it a shot.

7 And I'll hear what happens with that ultimately,
8 but the Martinezes, who claim some interest in this,
9 because, I think that's pretty clear under the Act, that
10 all those people need an opportunity to be heard.

11 So that would be my inclination. Do you want to
12 speak to that and help me fine tune it or --

13 MS. HUMPHREY: Hmm. Well, tell me again your
14 inclination so I can think through it while you tell me.

15 THE COURT: My inclination is I give a
16 reasonable amount of time for Plaintiff to do this, and
17 join all of those categories of which we've spoken.

18 MS. HUMPHREY: Well, your Honor, I think if you
19 look at the practical effect, I think the rule does
20 provide for that. The Declaratory Judgment Act. The
21 question becomes does the statute trump the Act?

22 But, like you say they can refile and rejoin.
23 One would hope they would think at that point that the
24 expenditure for that resources, is it going to be wisely
25 spent? That's what we would hope if they had to go

1 through this thing. This is --

2 THE COURT: I think they have to have an Amended
3 Complaint, also, to name these other parties, and course,
4 and --

5 MS. HUMPHREY: Right.

6 THE COURT: -- you may not agree with this but
7 to name these other parties, these three categories we're
8 talking about. So they would have to amend the Complaint.
9 I would tend to -- I don't know if this one has ever been
10 amended. Anyway, has it?

11 MS. HUMPHREY: No, your Honor.

12 THE COURT: I would tend, at this point so we
13 don't waste time with this, unless there is an objection
14 and I would hear it at this point from the Defendants, I
15 would allow an amendment now, at least as to those three
16 categories within this concept of serving. If, uh -- it's
17 to be liberally granted, so if Plaintiff thinks at that
18 point they have something else, well, hopefully you can
19 agree on that versus bringing this parciante into the
20 matter -- but I'll be here.

21 But I think that -- I just want to keep --
22 because they may think of something in light of this that
23 none of us are thinking about, that somehow they have to
24 change the Complaint, in addition to merely bringing these
25 parties.

1 So I would just want the parties just to
2 recognize that that is normally liberally granted.

3 So -- but I would certainly allow the amendment
4 at this point to join in the other -- these three entities
5 or categories to which you've referred so they can do
6 that.

7 Do you want to speak to that?

8 MS. HUMPHREY: Well, your Honor, I believe that
9 the rule allows for it, provides -- Rule 19 provides that
10 parties that haven't been joined, that the Court can allow
11 the other party.

12 So, your Honor, I believe in the Rules of Civil
13 Procedure, so I don't think I'm going to try and argue
14 that one, your Honor. I would hope that we can dispose of
15 the other motion, because it would certainly --

16 THE COURT: I just don't see how -- I mean, I
17 find that an interesting motion, I was looking forward to
18 it after reading it, but I don't see how --

19 MS. HUMPHREY: Oh, I see. You don't have
20 jurisdiction yet.

21 THE COURT: That's right.

22 MS. HUMPHREY: Well, your Honor, that's right.

23 THE COURT: And I don't see how you-all can
24 agree to get some kind of pontification (phonetic) here.

25 MS. HUMPHREY: Okay. Well, actually, your

1 Honor, I can't argue with the Rules of Civil Procedure. I
2 don't even want to try anymore, so...

3 THE COURT: All right. Ms. Taylor.

4 So that's the approach I'm suggesting. Do you
5 want to speak to that?

6 MS. TAYLOR: Yes, sir, I do. Thank you.

7 I believe that that's the right approach, your
8 Honor. In our conclusion we did ask that if you found
9 that other parties are necessary parties that we be given
10 some time to join them to the lawsuit, and, as you said,
11 amend the Complaint. Certainly the case we cited, La
12 Madera Community Ditch was a Declaratory Judgment Act
13 case, and they did that very same thing.

14 THE COURT: How are we going to figure out how
15 much time that's going to take, because you could be
16 naming -- I guess by naming all the parciantes, does that
17 equal those we would know are the owners, except for the
18 Martinezes, or...

19 MS. TAYLOR: Your Honor, yes, sir, that is a
20 very good question. I do need some help -- as the
21 Plaintiff here, I need some help from the acequia to...

22 THE COURT: Well, you could have discovery, if
23 need be, I suppose.

24 But will the acequia contain those reputed
25 parciantes?

1 STATE OF NEW MEXICO
2 COUNTY OF RIO ARriba
3 FIRST JUDICIAL DISTRICT
4 BEFORE HONORABLE STEPHEN PFEFFER
5 CASE NO. D-117-CV-2011-00521
6 CORLINDA H. LUJAN,
7
8 vs.
9 ACEQUIA MESA DEL MEDIO, et al.

Plaintiff,

Defendants.

REPORTER'S CERTIFICATE

12 I, MARY THERESE MACFARLANE, CCR NO. 122 for the
13 State of New Mexico, DO HEREBY CERTIFY that I was
14 provided, by Counsel for the Defendants in the
15 above-captioned matter, a copy of the FTR recording of the
16 proceedings had in said cause on the date of June 15,
17 2012; that I transcribed stenographically the selection
18 made by counsel for the Defendants, commencing with the
19 argument of Ms. Taylor through the end of the recording,
20 and that the foregoing pages, numbered 2 through 20, is a
21 true and correct partial transcription of the taped record
22 made in said cause on said date.

23
24 Mary Therese Macfarlane.
25 Certified Court Reporter No. 122
License Expires: 12-31-2012